

## **II. REMARKS**

### **A. Status and Office Action – Restriction Requirement**

Claims 1 – 71 are pending. Claims 1 – 71 are subject to an election requirement pursuant to 35 U.S.C. § 121, as it is the Examiner's position that the claims are directed to patentably distinct species as follows: Species 1, as illustrated in Figures 1-2; Species 2, as illustrated in Figures 3-4; Species 3, as illustrated in Figures 5-6; and Species 4, as illustrated in Figures 7-8. The Examiner has also alleged that none of the claims are generic.

### **B. Response – Provisional Election with Traverse**

Pursuant to 37 CFR § 1.143, Applicant is obligated to make an election even if the Applicant traverses the restriction requirement. Thus, Applicant provisionally elects Species 3, as illustrated in Figures 5-6, with traverse. Applicant submits that claims 1 – 4, 7, 8, 10, 11, 13 – 15, 17, 18, 21 – 23, 25 – 28, 33 – 36, 39, 40, 42, 43, 45 – 48, 50 – 54 and 57 – 71 read upon the provisionally elected species.

Applicant respectfully requests reconsideration and withdrawal of the restriction requirement as between the embodiment illustrated in Figures 1 and 2, and Figures 5 and 6, and also as between the embodiment illustrated in Figures 3 and 4, and Figures 7 and 8. As grounds for traversal, Applicant respectfully requests consideration of the following.

First, Applicant submits that proper grounds for restriction have not been alleged in the present case. In this regard, Applicant notes that MPEP § 816 requires that:

[t]he particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

MPEP § 816 at p. 800-56. The present Office Action does not set forth particular reasons as to why the embodiment illustrated in Figures 1 and 2 and the embodiment illustrated in Figures 5 and 6, as each is claimed, are distinct. The present Office Action also lacks a showing as to why the embodiment illustrated in Figures 3 and 4 and the embodiment illustrated in Figures 7 and 8, as each is claimed, are distinct. Rather, the present Office Action sets forth a mere conclusory statement, which does not satisfy the requirements of MPEP § 816.

Second, Applicant notes that MPEP §806 provides that “[w]here inventions are related as disclosed but are not distinct as claimed, restriction is never proper.” MPEP §806 at p. 800-39.

In the present case, Applicant notes that the embodiment illustrated in Figures 1 and 2, and the embodiment illustrated in Figures 5 and 6, are related as disclosed in the application, (see, for example, paragraph [0028]), but are not distinct as claimed. For example, claims 1 – 4, 7, 8, 10, 11, 13 – 15, 17, 18, 21 – 23, 25 – 28, 33 – 36, 39, 40, 42, 43, 45 – 48, 50 – 54 and 57 – 71 read upon the embodiments illustrated in Figures 1, 2, 5 and 6. Similarly, the embodiment illustrated in Figures 3 and 4, and the embodiment illustrated in Figures 7 and 8, are related as disclosed in the application, (see, for example, paragraph [0031]), but are not distinct as claimed. For example, claims 1 – 3, 5 – 7, 9, 10, 12 – 14, 16, 17, 19 – 22, 24, 29 – 32, 33 – 35, 37 – 39, 41, 42, 44 – 47, 49 – 53, 55 – 60 and 62 – 71 read upon the embodiments illustrated in Figures 3, 4, 7 and 8.

In view of the foregoing, Applicant submits that the present restriction requirement is improper, at least between the embodiments illustrated in Figures 1, 2, 5 and 6, and the embodiments illustrated in Figures 3, 4, 7 and 8.

Applicant further traverses the Examiner's allegation that none of the claims are generic. Of the provisionally elected independent claims, Applicant submits that claims 1, 25 and 33 are generic as applied to the provisionally elected embodiment.


### **C. Conclusion**

In view of the foregoing, it is respectfully requested that the present restriction requirement be reconsidered and withdrawn, and that an Office Action on the merits be issued at the Examiner's earliest convenience. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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